



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**AMENDED DECISION**

FOO/161606

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly calculated Petitioner's FS benefits for October 2014.

**This is an amended decision. The amendments are below in bold.**

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pang Thao-Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner's household size is three.

2. Petitioner's monthly income for October 2014 \$1119.80 consisting of \$876 from employment and \$631 in W-2 income. **Although the agency did not receive Petitioner's written employment verification until October, 30, 2014, Petitioner reported this change to the agency in September 2014.**
3. Petitioner did not have any shelter costs in October 2014.
4. **On November 24, 2014 the undersigned ALJ issued a written decision remanding the case to the agency to recalculate Petitioner's FS benefits for October 2014 using Petitioner's actual gross income for that month. Petitioner's actual gross income for October 2014 was \$1119.80.**
5. **On December 2, 2014 the agency requested a rehearing, which the undersigned ALJ granted.**

### DISCUSSION

In calculating Petitioner's monthly FS benefits, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income. *FSWH*, 1.1.4. The agency then must deduct a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 2 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the agency's calculations in this case. **The only issue in this case is when Petitioner reported to the agency that her employment had ended at [REDACTED]. The agency is correct in their rehearing request that the policy and regulations dictate that changes reported in October go into effect in November. *FSWH*, 6.1.3.3. However, it also follows that changes reported in September go into effect in October. *Id.* The issue in this case is not the policy, but rather when Petitioner reported her decrease in income to the agency. I find that Petitioner reported in September that her job as [REDACTED] had ended.**

The agency worker who submitted the rehearing request is not the same worker who appeared at the hearing. In addition, the agency workers who answer phone calls are not the agency workers who handle the fair hearings. There were countless agency workers who handled this case in September, October, and November 2014. At the hearing, petitioner testified that she reported in September that her employment with [REDACTED] had ended. Her employer, [REDACTED], then filled out an employment verification form incorrectly stating she still worked there, and she did not realize this until she received her October FS benefits. When she received those benefits, she called the agency, explained the income they budgeted was incorrect, and the agency's response was to file a fair hearing request. Petitioner did that, and also submitted another employment verification form from [REDACTED] showing her employment had ended September 11, 2014.

A review of the case notes included in Exhibit 3 support Petitioner's testimony that she reported her job ending at [REDACTED] in September. On September 10, 2014, one day before her job at [REDACTED] ended, Petitioner called the agency to inquire if the agency had received her employment verification form. The agency had not. She called again on September 11 to inquire if the agency had received her employment verification form. Later that day the case was updated as the employment verification form confirmed Petitioner's employment with [REDACTED]. Petitioner did not call back the agency with respect to her FS case until October 6, 2014 as she did not

understand why her FS had decreased. This supports Petitioner's testimony that she informed the agency her employment at [REDACTED] had ended.

The agency is correct in stating that they did not receive the verification form that Petitioner ended her employment with [REDACTED] until October 30, 2014, however, this does not show that Petitioner never reported this change in September. The case notes and Petitioner's testimony support that she informed the agency that her employment was ending, and that the wrong form was returned to the agency. Petitioner did not realize this issue until she received the incorrect amount of FS. She then called the agency to tell them that the income they used was incorrect, to which they told her she needed to file a fair hearing request.

In finding that Petitioner reported her decrease in income to the agency in September, I am requiring the agency to use the actual income Petitioner earned in October for determination of Petitioner's October FS benefits. Congress created the food stamp program in 1964 to "permit those households with low incomes to receive a greater share of the Nation's food abundance." The Food Stamp Act of 1964, Pub.L. No. 88-525, § 2, 78 Stat. 703, 703. This Petitioner is a single mother with two children. She had three children, but one of her children died. She is working, but is reliant on the FS program to support her family. The food stamp program was designed for people like this Petitioner.

In this case, the agency incorrectly calculated Petitioner's earned income from employment. I find that Petitioner's earned income from employment in October 2014 was \$876. **This is the actual amount of Petitioner's earned income for October. I find that Petitioner reported this change to the agency in September, and thus the agency incorrectly calculated Petitioner's October FS benefits. Therefore, Petitioner's FS should have been higher in October 2014.**

### **CONCLUSIONS OF LAW**

The agency incorrectly calculated Petitioner's monthly FS benefits for October 2014.

**THEREFORE, it is**

### **ORDERED**

That this case is remanded back to the agency to recalculate Petitioner's FS benefits for October 2014. The monthly gross income for October 2014 is \$1119.80. Petitioner did not have any shelter costs in October 2014. The agency should use those amounts when recalculating Petitioner's monthly FS for October 2014. The agency has **already complied with this order per their rehearing request.**

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of December, 2014

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 17, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability